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BellSouth Telecommunications, Inc.

333 Commerce Street

Suite 2101

Nashville, TN 37201-3300

guy.hicks@bellsouth.com

T.R.A. DOCKET ROOM
January 30, 2004

Guy M. Hicks

General Counsel

615 214 6301

Fax 615 214 7406

VIA HAND DELIVERY

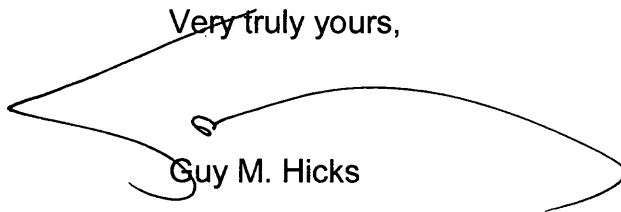
Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *In the Matter of Notice of Rulemaking Amendment of Regulations for
Telephone Service Providers*
Docket No. 00-00873

Dear Chairman Tate:

Enclosed are the original and fourteen copies of BellSouth's *Initial Comments*.
Copies of the enclosed are being provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *In the Matter of Rulemaking Amendment of Regulations for Telephone Service Providers*

Docket No. 00-00873

INITIAL COMMENTS OF
BELLSOUTH TELECOMMUNICATIONS, INC.

On January 16, 2004, the Tennessee Regulatory Authority ("the Authority") issued a proposed revision to Rule 1220-4-2-.07, entitled *Obligations of Resellers and Underlying Carriers of Local and Intrastate Long Distance Service Upon Termination of Service* (the "Current Proposal"). The Authority's January 16th Notice stated that the Current Proposal would amend the June 12, 2002 version of proposed Rule 1220-4-2-.07, *Termination of Local Service to a Reseller or Cessation of Service by a Local Telecommunications Service Provider*. The Authority provided interested parties the opportunity to file written comments concerning this amendment to proposed Rule 1220-4-2-.07 no later than January 30, 2004. BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits these *Initial Comments*.

BellSouth understands that the Authority's recent experience with several resellers offering pre-paid services to residential customers provides the genesis for the Current Proposal. Those resellers failed to pay amounts owed to underlying carriers, failed to comply with TRA certification requirements, and failed to notify their end users that they were discontinuing service in Tennessee. As a consequence of these failures,

some end users complained about their service being terminated.¹ Given the defaults of these resellers and BellSouth's compliance with both its resale agreements and other obligations, BellSouth respectfully opposes certain aspects of the Current Proposal, particularly those which shift burdens from defaulting resellers and onto the underlying carriers. These Comments will also address practical problems with the Current Proposal.

BellSouth submits that proposed Rule 1220-4-2-.07, as it appeared in the Authority's draft rules released June 12, 2002 (the "2002 Proposal") provides a more balanced approach to the issues the Current Proposal seeks to address.² Subpart (1) of the 2002 Proposal addressed the "Termination of Service to a Reseller by an Underlying Carrier." This subpart required that the underlying carrier terminating service to a local or long distance reseller provide the reseller and the Authority thirty (30) days' written notice of service termination. In addition, an underlying carrier was required to provide soft dialtone to affected end-user customers for fourteen (14) days.

Subpart (2) of the 2002 Proposal addressed the "Cessation of Service by a Local Telecommunications Service Provider." Subpart (2) required local telecommunications service providers (which includes resellers) to give their end-user customers and the Authority thirty (30) days' notice before ceasing to provide local services. Soft dialtone to end-users for fourteen (14) days after service cessation was also required by the

¹ BellSouth is not aware of any complaints that end users have been unable to obtain service from other service providers.

² The 2002 Proposal differs substantially from the Current Proposal. BellSouth filed a few suggested revisions to the 2002 Proposal, but agreed in concept to the approach set forth in the 2002 Proposal.

local service provider. BellSouth does not oppose the new obligations it would assume under the 2002 Proposal, with minor modifications.³

The Staff's Current Proposal also requires an underlying carrier to provide resellers and the Authority no less than thirty (30) days' written notice of service termination. The Current Proposal also substantially reduces the notice period that a reseller must give to its end-users, from thirty (30) days to ten (10) days. Moreover, the underlying carrier is required to provide basic local exchange service for up to fourteen (14) days to end-users who fail to switch to a new provider before the reseller's service is terminated. Immediately after the termination of service, the Current Proposal also requires the underlying carrier to notify the reseller's end-users of the temporary change in service providers, together with any change in rates, terms or conditions of service.

BellSouth opposes these provisions.⁴ Resellers, not underlying carriers, should be required to give notice to their end-users. After all, the reseller should be in a better position to know of its own plans to exit the market or cease paying its bills before the underlying carrier knows of any such plans. Moreover, it is the reseller, not the underlying carrier, that has caused the problem in the first place.

If a reseller is unable to pay its bills or otherwise chooses to exit the market, the reseller should give thirty (30) days' advance notice to its end-users. This provides more than sufficient time for end-users to choose another service provider. Under

³ For example, the Rule should expressly allow the underlying carrier providing soft dialtone to use wholesale information necessary to meet its obligations under the Rule. Also, since 2002, BellSouth has learned through experience with resellers that fourteen (14) days' notice, rather than thirty (30) days' notice from the reseller to its end-users is preferable because the fourteen (14) days' notice allows additional time for the reseller to pay its bills to the underlying carrier and avoid termination of service.

⁴ At the very minimum, BellSouth proposes that the underlying carrier should be paid for the provision of any such temporary services out of the bond or other financial instrument the reseller posts with the Authority. This is only fair in that it would require the defaulting party causing the service termination to pay for the interim service provided to the end-user. Otherwise, the underlying carrier ends up providing service without any realistic hope of recovering from the defaulting reseller.

Section 214 of the federal Telecommunications Act, carriers providing long distance service are required to notify the FCC when they exit a market. They must also certify to the FCC that they have provided their end-user customers with at least thirty (30) days' advance notice. In BellSouth's experience, most resellers in Tennessee offer both local and long distance services and therefore are subject to this notice requirement under federal law.

Absent unusual and emergency circumstances, the Authority should not require that end-users change service providers twice. Changing service from the defaulting reseller to the underlying carrier and then changing service again to a provider of the end-user's choosing, as contemplated by the Current Proposal, will serve to complicate matters for the end-user and cause confusion. Such "double migrations" should not be institutionalized in a Rule. The Current Proposal may even unintentionally encourage the creation of such emergencies by allowing resellers to avoid the obligations they owe to their customers by providing only ten (10) days' notice of their intention to exit the market. As written, the Current Proposal would, for example, allow a financially healthy reseller to shift its obligations flowing from a decision to exit the market or not meet its financial obligations to an underlying carrier by intentionally withholding payment to the underlying carrier and failing to provide the notice to its customers. Under the Current Proposal, the underlying carrier would have to assume the administrative and cost burden of doing what the reseller should have done for its own customers in the first place.

BellSouth has additional practical and operational concerns as well. The only exception to the thirty (30) day written notice requirement in the Current Proposal is

found at 1220-4-2-(3)(a)(1), which states that the underlying carrier is allowed to disconnect the reseller after a 48-hour notice and approval by the Authority Chairman if there is evidence of fraud or abuse or unreasonable interference with the underlying carrier's network. However, even if this emergency provision is successfully invoked, the underlying carrier is still required to provide the notification and free temporary service set forth in section (4)(e)(f)(g). As a result, the underlying carrier is saddled with additional responsibilities even in the situation where the reseller is committing fraud.

Section (4)(a) of the Current Proposal states that the reseller "... must provide the underlying carrier any and all relevant information, including but not limited to its customers' names and telephone numbers, to ensure that end-user customers will not experience service outage..." BellSouth believes it unlikely that a defaulting reseller will cooperate and provide this required information to BellSouth, particularly when the reseller's service is being disconnected by BellSouth. As a practical matter, this means that BellSouth will have to spend much time and effort in developing all of the necessary information contemplated by the Current Proposal.

Section (4)(c) of the Current Proposal states that "if the reseller fails to fulfill its [notice] obligations ... the underlying carrier shall notify the reseller's customers seven (7) days prior to terminating the reseller's local service." BellSouth believes that the underlying carrier should not be required to provide such notification because the reseller fails or chooses not to meet its responsibilities. Moreover, seven (7) days is an unreasonably short time period to make the notifications, and this requirement would likely simply delay the ability of an underlying carrier to disconnect service. Such delays are expensive to the underlying carrier, which is faced with providing additional

wholesale service to the reseller without the likelihood of being paid for those services. Moreover, Section (4)(c) of the Current Proposal assumes that a reseller that is being disconnected for nonpayment will reimburse an underlying carrier for notifying the reseller's end-users. BellSouth believes that this is very unlikely to occur and that the underlying carrier will be left "holding the bag."

Section 4(e) of the Current Proposal references "the rate set forth in a tariffed emergency service continuity plan approved by the Authority." Without knowing what the rate is, BellSouth cannot agree to this provision.

Finally, BellSouth has an additional practical concern that is borne out of the fact that most notices of disconnection sent to resellers result in payments by resellers to the underlying carrier and not disconnection of service. Disconnection is the exception, rather than the rule. Under Section (3)(b) of the Current Proposal, the reseller has only two options when it receives a notice of disconnection. It must either (1) tell its customers that they must choose another provider or (2) have the underlying carrier place an intercept recording. In effect, the recording would inform the reseller's customers that the reseller was going out of business. It is unlikely that either alternative would be necessary in most cases. In fact, if the reseller pays its bill and no disconnection takes place, the end-user would be unnecessarily alarmed and confused by either notice from a reseller or an intercept recording from the underlying carrier. Moreover, the reseller will likely accuse the Authority and underlying carrier of "anti-competitive conduct" and harm to its business reputation, particularly if the reseller catches up on its payments to the underlying carrier and continues providing service.

In summary, BellSouth wishes to cooperate with the Authority, but has serious concerns with the Current Proposal. With a few revisions, BellSouth has no objection to the 2002 Proposal referenced above. If the Authority does not wish to proceed with the 2002 Proposal, BellSouth believes that an industry workshop with representative underlying carriers and resellers, together with Authority staff, may be beneficial.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A large, stylized handwritten signature in black ink, appearing to read 'Guy M. Hicks', is written over a horizontal line.

By:

Guy M. Hicks
Joelle J. Phillips
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
615/214-6301

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2004, a copy of the foregoing document was served on the parties of record, via the method indicated:

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| <input type="checkbox"/> Hand | James Wright, Esq. |
| <input checked="" type="checkbox"/> Mail | United Telephone - Southeast |
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| <input type="checkbox"/> Overnight | Nashville, TN 37219-8062 |
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| <input type="checkbox"/> Hand | Bruce H. Mottern |
| <input checked="" type="checkbox"/> Mail | TDS Telecom |
| <input type="checkbox"/> Facsimile | P. O. Box 22995 |
| <input type="checkbox"/> Overnight | Knoxville, TN 37933-0995 |

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Charles B. Welch, Esquire
Farris, Mathews, et al.
618 Church St., #300
Nashville, TN 37219

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

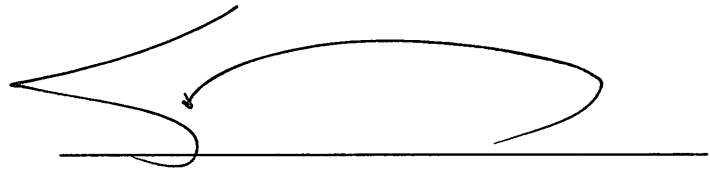
Timothy Phillips, Esquire
Office of Tennessee Attorney General
P. O. Box 20207
Nashville, Tennessee 37202

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Andrew O. Isar, Esquire
ASCENT
7901 Skansie Ave., #240
Gig Harbor, WA 98335

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Dale Grimes, Esquire
Bass, Berry & Sims, PLC
315 Deaderick Street, Suite 2700
Nashville, Tennessee 37238-3001

A handwritten signature in black ink, consisting of a stylized, elongated loop with a horizontal line extending to the right, resting on a horizontal baseline.